Supreme Court, U.S.
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No. 05-66

In The

Supreme Court of the United States

SHAWN BROUSSARD,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For A Writ Of Certiorari To The Second Parish Court, Parish Of Jefferson, State Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is an ordinance making it unlawful "for any person to obstruct or interfere with any law enforcement officer in the performance or discharge of his duties" to which there has been no limiting construction vague and overbroad in violation of the First and Fourteenth Amendments and has that ordinance been constitutionally applied to the Petitioner in the proceedings below?

LIST OF PARTIES TO THE PROCEEDING

All parties to this proceeding are contained in the caption of this matter.

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OPINIONS AND ORDERS BELOW

The Louisiana Fifth Circuit Court of Appeals orders refusing to grant supervisory writs are unreported. App. 10, 11. The decisions of the Louisiana Supreme Court refusing to grant writs of review, certiorari and mandamus are also unreported. App. 12, 13. The judgment of the Jefferson Parish Criminal District Court is unreported. Pertinent provisions of that transcript are attached. App. 1-9.

STATEMENT OF JURISDICTION

The judgment of the trial court was entered on November 13, 2003. The Fifth Circuit Court of Appeals For The State of Louisiana denied a timely petition for writs of review on February 18, 2004 and is unreported. App. 10, 11. The Louisiana Supreme Court denied a timely appeal on February 18, 2005. App. 12. The Louisiana Supreme Court subsequently denied a timely application for rehearing or reconsideration of her application for writs of review, certiorari and mandamus on April 8, 2005. App. 13. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Local Ordinances

Code of Ordinances, Jefferson Parish Louisiana § 20-23 ("Definitions") is lengthy and is reproduced on page 15 of the Appendix.

Code of Ordinances, Jefferson Parish Louisiana § 20-24 ("Interfering with law enforcement officers") provides:

"(a) It shall be unlawful for any person to obstruct or interfere with any law enforcement officer in the performance or discharge of his duties. (b) 'Obstruct,' for the purposes of this section, shall also include any acts or actions which an 'obstruction of' an officer's duties as defined in R.S. 14:108." This ordinance is also reproduced on page 16 of the Appendix.

State Statutes

Louisiana Revised Statute 14:108 is lengthy and is reproduced on page 14 of the Appendix.

Constitutional Provisions

The First Amendment to the United States Constitution provides, in pertinent part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

A. The Incident Forming the Basis of This Application

The Petitioner in this matter is Captain[1] Shawn Broussard, U. S. Army.[2,3] The events which form the basis of this matter occurred on the evening of November 2, 2002, at Dillard's Department Store in Oakwood Mall in Gretna, Louisiana. The entire incident, which lasted less than two minutes, was captured on surveillance video.[4] Petitioner implores this Court to review that video in consideration of this application as it depicts how the application of Jefferson Parish ordinance § 20-24 (J.P. 20-24) can persecute an otherwise lawful citizen for exercising his right to free speech and assembly in violation of the First and Fourteenth Amendments.

On the evening of November 2, 2002, Capt. Broussard was shopping at Dillard's Department Store (herein referred to as "Dillard's") on the evening of November 2, 2002, when she observed a conversation between a store

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[1] At the time of her arrest, Shawn Broussard held the rank of First Lieutenant, she was subsequently promoted during the course of this litigation.

[2] Capt. Broussard has had a very distinguished career, earning three Army Achievement Medals, two Meritorious Service Medals, three Good Conduct Medals, two Army Commendation Medals and the Joint Service Achievement Medal. Capt. Broussard's assignments have included positions at the Pentagon, the White House and Operation Desert Storm. Capt. Broussard maintains a high level of security clearance. However, despite her distinguished service record, Counsel for the State objected to acknowledging Capt. Broussard's achievements and refused to address her as "Lieutenant Broussard" during her trial.

[3] Capt. Broussard is scheduled to deploy to Iraq on July 21, 2005.

[4] Petitioner has numerous copies of the surveillance video and will promptly produce them should this Court wish to view them.

clerk and a shopper. Capt. Broussard heard the clerk ask the shopper, a man, if he needed assistance, and he answered that he did not. Jefferson Parish Sheriff's deputies Jason Picou and Chester Kowalski were working a paid detail for Dillard's. Deputy Picou, followed by Deputy Kowalski approached the man and asked him if he had been rude to the sales clerk. Capt. Broussard attempted to tell the deputies what she had heard of the conversation. Deputy Kowalski asked the man if he knew Capt. Broussard, to which he answered "no." Capt. Broussard, hearing this exchange, told the deputies that she did not know the man. Deputy Kowalski then told Capt. Broussard she had to show him her identification. When she questioned Deputy Kowalski about why she had to produce identification, she was told to do so or leave the store. When she questioned Deputy Kowalski a second time, without answering her inquiry, Deputy Kowalski handcuffed and arrested Capt. Broussard. Capt. Broussard's testimony is corroborated by an independent witness, who was not acquainted with Capt. Broussard prior to the incident. The testimony of the independent witness was largeley ignored by the trial court. This witness, Ms. Thomas, testified that Capt. Broussard was only speaking to the officers, not to the "suspected shoplifter," and that Capt. Broussard was not behaving in a loud or boisterous manner. Contrarily, the deputies testified that Capt. Broussard was speaking to the "suspected shoplifter" and talking in a loud tone.

The entire exchange, from the time she first spoke to the deputies, until the time she was handcuffed by Deputy Kowalski, took place in a mere minute and thirty-nine seconds. Her entire interaction with Deputy Kowalski took only forty-one seconds, from the time she first spoke to

him until he placed her under arrest. The exchange in which Deputy Kowalski claims he told her to leave three times, took only fifteen seconds. Only two seconds elapsed between Deputy Kowalski's last statement to Capt. Broussard and his reaching for the handcuffs. The surveillance video shows that Capt. Broussard did not resist the deputies in any way or do anything other than speak to them prior to her arrest.

Capt. Broussard was then taken, not to the police station located on the Mall property, but to a back room at Dillard's. There Deputy Kowalski, who is physically much larger than Capt. Broussard, used racial slurs, cursed her, threw her up against a wall, and held her there with his forearm pressed against her throat, choking her. Despite her verbalizing that he was choking her and hurting her, the deputy would not let go, and Capt. Broussard struck out by the only means which she could use, her feet, as her hands were cuffed behind her back. She struck the deputy twice in succession, first with her knee, and then with a kick, forcing him to let go of her throat. In the middle of this altercation, Brian Jacobs, a Dillard's employee, entered the room and after the deputy had let go of Capt. Broussard, he pushed her back against the wall. Brian Jacobs and Deputy Kowalski held Capt. Broussard against the wall, and Deputy Kowalski threatened her with Mace. A third deputy arrived and took Capt. Broussard to the police station.

The deputies testified that Capt. Broussard hindered their "investigation" by speaking to the shopper, who they subsequently identified as a "suspected shoplifter." The deputies further claimed that they were unable to complete their investigation due to Capt. Broussard's "interference," however, the video clearly shows the "suspected